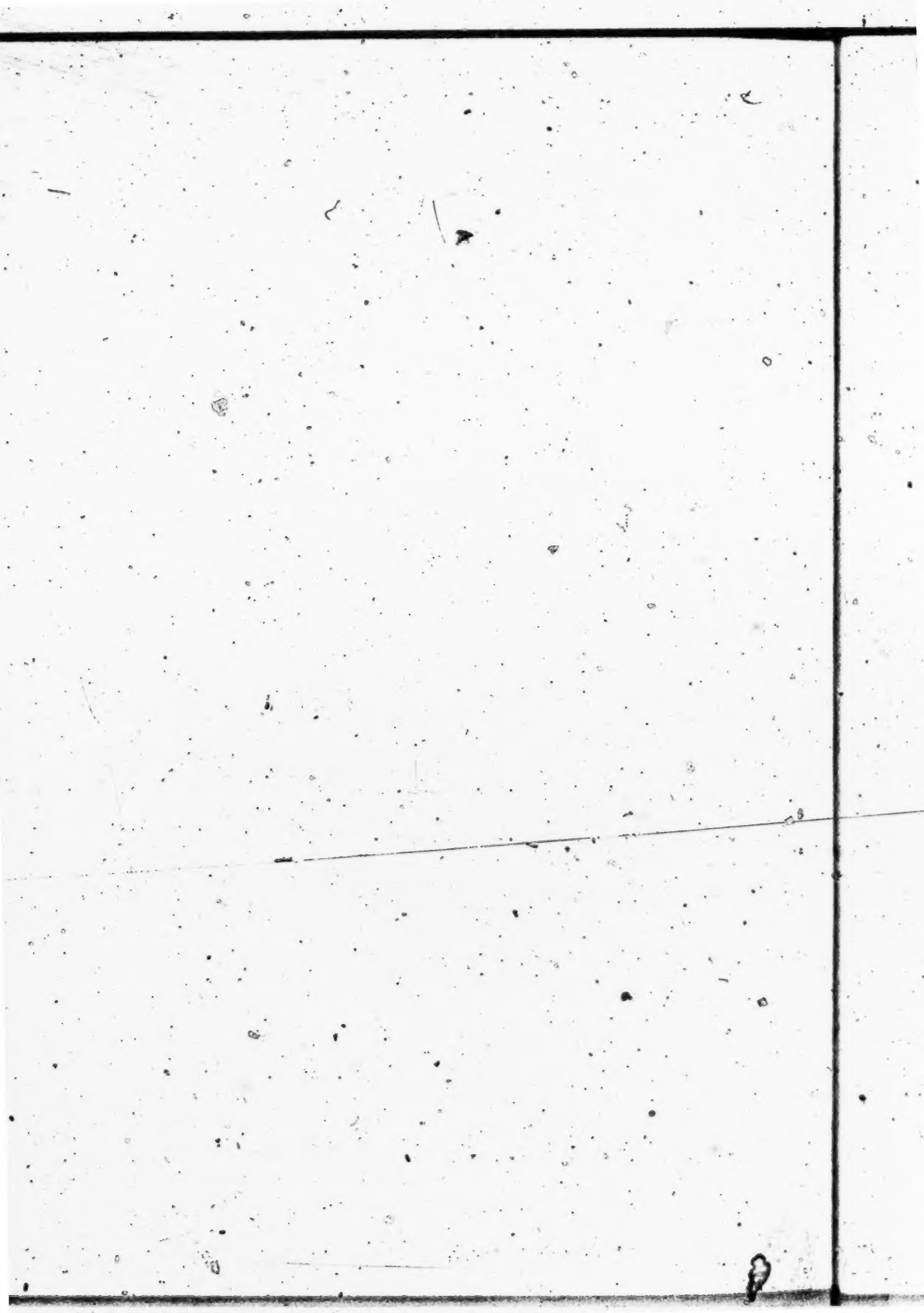

SUPREME COURT, U. S.

APR 30 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1283

STATE ex rel. WILMER RHODES, *Appellant*

vs.

GRANT K. COOK, *Appellee.*

On Appeal from the Supreme Court of the State of Washington

BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANT'S JURISDICTIONAL STATEMENT

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INDEX

	PAGE
I. Preliminary Statement	1
II. Interest and Description of Amici	2
III. Argument	3
A. The History and Posture of the Case	3
B. The Questions Presented Are of National Importance	5
IV. Conclusion	12

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I PRELIMINARY STATEMENT

Pursuant to Rule 42 of the Rules of this Court, Pay'n Pak Stores, Inc., Pay & Pack Electric & Plumbing Supply Co., Beaver Electric & Plumbing Supply, Grover Electric & Plumbing Supply Co., Perry Electric & Plumbing Supply Co., Apex Stores, Hawk Electric & Plumbing Supply, Inc., Falcon Plumbing & Electric Supply, Buzzard Electric & Plumbing Supply, Buzzard Electric & Plumbing Supply, Inc. of Seattle, Eagle Electric & Plumbing, Eagle Electric & Plumbing Inc. of Moses Lake, file this

brief of *amici curiae* in support of the Appeal and Jurisdictional Statement of Appellant, Wilmer Rhodes. The parties have granted their consent to the filing of this brief.

II INTEREST AND DESCRIPTION OF AMICI

Pay 'n Pak Stores, Inc., is a Washington Corporation, having thirteen subsidiaries engaged in the electrical and plumbing retail supply business in the States of Washington, Oregon, and California, with its principal office in Longview, Washington. The other *amici* are independent businesses located in Denver, Colorado; Medford, Coos Bay, Portland, Beaverton, Salem and Eugene, Oregon; Great Falls, Montana; Vancouver, Spokane, Yakima, Seattle, and Moses Lake, Washington; and are engaged in the same line of business. All of the *amici* concentrate on sales of electric and plumbing supplies and equipment to the "do-it-yourself" market. Their total sales of plumbing supplies are estimated to have been between five and six million dollars in 1967. There are a substantial number of other businesses in the West and throughout the United States which similarly concentrate on sales of plumbing supplies to the "do-it-yourself" market. Retail sales of plumbing equipment and supplies to the "do-it-yourself" market constitute approximately 85 per cent of retail sales of all plumbing supplies and equipment by *amici curiae*.

The opinion of the Supreme Court of the State of Washington upholding the provisions of the Snohomish County Plumbing Code will have a direct adverse impact on all of the *amici curiae* and other comparable businesses in all the places where a similar code is in effect. The Western Plumbing Officials Uniform Plumbing Code, on which the Snohomish County Plumbing Code was based, has been used in a number of Western States, and plumbing contractors and unions are striving to get this Code even more widely adopted. Provisions similar to the provisions of the Snohomish County Plumbing Code challenged in this case are found in many other plumbing codes throughout the United States.

III ARGUMENT

A. The History and Posture of the Case

The Opinion of the Supreme Court of the State of Washington dated November 9, 1967 is reported in 72 Wash. 2d 431, 433 P2d 677 and is printed in Appendix A to Appellant's Jurisdictional Statement. The Opinion of the Superior Court of Snohomish County Washington is unreported, but is printed in Appendix B to the Jurisdictional Statement. The judgment sought to be reviewed is the opinion of the Supreme Court of the State of Washington, made a final judgment by the denial of Appellant's Petition For Rehearing on January

3, 1968. Notice of Appeal was filed by the Appellant on March 19, 1968, and the Jurisdictional Statement was filed in this Court on April 1, 1968. Appellant invoked the jurisdiction of this Court under 28 U.S.C., Section 1257(2).

The Jurisdictional Statement filed by Appellant presents a question whether Section 1.10(c) of the Snohomish County Plumbing Code, which prohibits issuance of a plumbing permit to non-occupying owners of single-family dwellings unless they qualify as plumbing contractors, unjustly discriminates against such persons in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. The Jurisdictional Statement also raises an issue as to whether this provision of the Code offends the Due Process Clause of the Fourteenth Amendment. Under the Code, upheld by the Supreme Court of the State of Washington, a home-owner cannot even replace a simple valve in a residence which he owns but is not going to occupy. Moreover, a resident non-owner may not do any plumbing work on the premises, even with the owner's consent and regardless of the length of his lease. This provision of the Code was adopted as a result of the efforts of plumbing contractors to effectively prohibit self-help plumbing work in all dwellings not occupied by the owner. By virtue of this Code, the plumbing contractors and unions have achieved an effective

monopoly of the vast bulk of plumbing work in Snohomish County.

The pertinent provisions of the Snohomish County Plumbing Code involved in this case have been fully set forth in Appellant's Jurisdictional Statement and Appendix D thereto. The Appellant's claim that the provision of the plumbing code violated his rights under the Fourteenth Amendment to the Constitution of the United States was made at every stage of the proceedings below as detailed in the Jurisdictional Statement.

B. The Questions Presented are of National Importance.

1. There is a substantial impact on property owners and renters.

The Snohomish County Plumbing Code says that a property owner who does not reside or intend to reside on his property may not perform even the most elementary plumbing work unless he qualifies as a plumbing contractor, even though the same Code also provides that all plumbing work, whether done by an owner-occupier or by a plumbing contractor, must meet the same standards and pass the same inspection.[1]

The Washington Supreme Court, by implication, has affirmed the proposition that an occupier of a residence who is not the owner is likewise prohibited from fixing the plumbing. If he does, he can go to jail.[2]

1. Snohomish County Plumbing Code §§ 1.4, 1.11, 1.13, 306, 309, 321.
2. Snohomish County Plumbing Code § 1.7. See Record on Appeal.

Therefore, the decision of the Supreme Court of the State of Washington means that, wherever there has been adopted a Code comparable to that in Snohomish County:

> (1) A person who occupies his residence, if not the owner, cannot himself do any plumbing work therein, even if he has a 20-year lease;
>
> (2) A person may not assist his neighbor in installing a toilet, he may not assist in group-help projects, or even assist his aged mother at her home.

In 1960, there were 10,800 single-family dwellings in Everett, the County Seat of Snohomish County, of which 36.1 per cent, or about 4,000, were renter-occupied.[3]

None of those heads of households can repair the plumbing in their homes. A significant portion of those renters are members of economically disadvantaged minority groups who can least afford to hire plumbing contractors.[4]

All plumbing work in Snohomish County must pass an inspection before being used. The standards imposed are severe enough to insure that the work passing in-

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3. U. S. Bureau of Census, Dept. of Commerce, Pub. No. HC(1) 49, U. S. Census of Housing, 1960, Washington, Table 15.

4. Report of the National Advisory Committee on Civil Disorders, 257, 348-58 (1968). On the Pacific Coast, plumbing contractors' hourly charges range between $9.00 and $12.00. Union-member journeymen plumbers receive a basic hourly wage of $6.00, plus fringe benefits.

spection will not adversely affect public health.[5] Thus, no person doing plumbing work, whether a plumbing contractor or not, may inflict substandard or unhealthy plumbing on the public, and the Chief Plumbing Inspector of Snohomish County so testified at the trial.

Section 1:10(c) of the Snohomish County Plumbing Code adds nothing to the protection already afforded to public health by the other provisions of the Code, but it does confer substantial benefits on plumbing contractors and plumbers' unions.[6]

2. The questions raised have a substantial impact on retail outlets.

The "do-it-yourselfers" are not the only ones who suffer from this legislation. The retail plumbing supply stores sell their share of the products of an industry which annually manufactures over one-half billion dollars worth of plumbing fixtures.[7] Eighty-five per cent of plumbing supplies sold by *amici curiae* are sold to persons doing their own plumbing.

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5. Record p. 0075.

6. The importance of this provision to the commercial plumbing community is shown by the fact that the Kitsap County Master Plumbers' Association was represented by counsel and filed an *amicus curiae* brief in support of the prosecuting attorney's position in *State v. Randall*, Superior Court of the State of Washington in and for Kitsap County, No. 44599 (unreported). *Randall* was a criminal prosecution of a homeowner for doing plumbing work in a home not occupied by him without securing the permit required by the plumbing code. The trial court dismissed the action.

7. U. S. Bureau of Census, Dept. of Commerce, Pub. No. M.C. 63(2), 1963 Census of Manufacturers, Table B-5.

From 1963 through 1966, between 778,000 and one million private, single-family housing units were constructed in the nation each year.[8] If only ten per cent of that construction were performed by owners themselves, which would not be unusual in the Pacific Northwest, 77,000 to 100,000 units would be built each year by the "do-it-yourselfers."[9] This new construction alone would involve annual average sales of plumbing supplies valued at about $200,000,000.[10]

The persons who control or monopolize the plumbing industry in Everett stand to receive substantial benefits. The expansion of such monopolistic benefits to a state and nation-wide basis would confer correspondingly greater benefits. In 1960:

(1) In the United States, there were 58,326,357 housing units in existence. 76.3 per cent of these were single-family dwellings. 61.9 per cent were owner occupied; 38.1 per cent were renter occupied.[11]

(2) In the State of Washington, there were 1,009,519 housing units in existence. 83.1 per cent of these were single-family dwellings. 68.5 per cent

8. U. S. Business and Defense Services Administration, Dept. of Commerce, Construction Review, Table A-1 (February, 1968).
9. It is not at all uncommon in the Pacific Northwest for persons of moderate income to purchase and renovate single-family homes for sale or rental.
10. Contractors in Longview, Washington, state that a good rule-of-thumb estimate for two baths and one kitchen is approximately $2,000.
11. U. S. Bureau of Census, Dept. of Commerce, Pub. No. HC(1) 1, U. S. Census of Housing, 1960, Table 15.

were owner-occupied; 31.5 per cent were renter occupied.[12]

(3) In the State of Oregon, there were 622,853 housing units in existence. 86.5 per cent of these were single-family dwellings. 69.3 per cent were owner occupied; 30.7 per cent were renter occupied.[13]

(4) In the State of Idaho, there were 223,533 housing units in existence. 89.4 per cent of these were single-family dwellings. 70.5 per cent were owner occupied; 29.5 per cent were renter occupied.[14]

(5) In the State of California, there were 5,465,870 housing units in existence. 76.5 per cent of these were single-family dwellings. 58.4 per cent were owner occupied; 41.6 per cent were renter occupied.[15]

Those 30 per cent to 40 per cent of the people in this country who occupy homes not owned by them, if subject to Snohomish County-type plumbing codes, would have no reason whatsoever to purchase plumbing fix-

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12. U. S. Census of Housing 1960, Washington, *op. cit. supra* Note 3 at Table 1.
13. U. S. Bureau of Census, Dept. of Commerce, Pub. No. HC(1) 39, U. S. Census of Housing 1960, Oregon, Table 1.
14. U. S. Bureau of Census, Dept. of Commerce, Pub. No. HC(1) 14, U. S. Census of Housing 1960, Idaho, Table 1.
15. U. S. Bureau of Census, Dept. of Commerce, Pub. No. HC (1) 6, U. S. Census of Housing 1960, California, Table 1.

tures at retail. In addition to the effect which the adoption of such legislation would have on people no longer allowed to do their own plumbing, the loss of market would be catastrophic to those in the retail plumbing supplies business. It is a rare plumbing contractor who is not in the business of selling plumbing fixtures and equipment. The contracting business and the sale of the equipment to be installed go hand in glove. Once the plumbing contractors and the plumbers' unions have acquired the stranglehold afforded by this type of legislation on plumbing activities and sale of plumbing fixtures, there will be no limit to the cost resulting to the homeowner.

3. The questions have a substantial impact on the social structure.

This case involves another facet, perhaps even more important than the economic, and that is its effect on a fundamental premise of our way of life. Certainly, some regulation of and restriction on use of land, type of construction, and the like, are required in any densely-populated society. Heretofore, so long as the property owner complied with the standards imposed by government to protect the public, he has not been compelled to hire others to do his work.

Now the plumbing contractors and the plumbers' unions have procured legislation which, through crim-

inal sanctions, takes away what has customarily been thought of as a basic right of ownership—the right to do your own work on your own land.

It would be equally reasonable to forbid a plumber, in the interests of safety, to tinker with or fix any automobile he happens to own, unless he certifies that he alone will occupy it on the public highways.

This case represents an opportunity to define the extent to which any governmental unit can dictate to the individual in areas not related to public health, safety and welfare. If a person's work can pass an inspection, he should be allowed to perform that work himself; he should not be compelled to employ special-interest groups at exorbitant cost.

No legislation should have as its purpose the granting to any segment of an industry the power to dictate to, and control the profit of, its competitors.

4. The classifications established by Section 1.10(c) of the Snohomish County Plumbing Code are irrational and arbitrary.

The Majority of the Supreme Court of the State of Washington upheld Section 1.10(c) of the Snohomish County Plumbing Code (against the contention that it violated the Equal Protection Clause of the Fourteenth Amendment) on the "assumption" that an occupant

would do a more careful job of plumbing because he would be motivated to protect himself and his family. The Court's assumption overlooks the fact that the Code does not classify in terms of occupancy; the Code prevents a renter-occupier, who would have the same motivations for careful work as an owner-occupier, from doing the plumbing in his residence. This inconsistency of the Majority's decision is well pointed out in the Dissenting Opinion.

IV CONCLUSION

This case is of substantial importance, and the Court should note probable jurisdiction.

Respectfully submitted,

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By_____
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April 29, 1968